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IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1902.

No. 440.

AMERICAN COLORTYPE COMPANY, *Appellant,* vs. **CONTINENTAL COLORTYPE COMPANY, WILLIAM J. MAAS, BAXTER J. FIERLEIN, HENRY FREESE, HENRY E. SCHULTZ, O. H. QUETSCH, and J. O. M. SEIBERT,** *Appellees.*	Appeal from the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

REPLY ARGUMENT OF APPELLANT.

The sole question in this appeal is whether the Circuit Court had jurisdiction to grant any part of the relief asked.

If we are right upon either the first or the second of three propositions stated in our brief and argument, then the court had such jurisdiction. The third proposition goes only to the extent of the jurisdiction.

The answer made to our first proposition is, in effect, that we pleaded the requisite jurisdictional facts *by inadvertence.*

Inasmuch as the evidence of this supposed inadvertence consists solely of the conjecture of counsel; and

inasmuch as this inconclusive evidence is weakened by the fact, stated in our former brief, that this same point was urged upon the court below, we submit that this defense hardly rises to the plane of seriousness.

The inference may be drawn from the argument of counsel (though the point is not directly made) that in their opinion the *substitution* of a new party to a contract *in lieu and in stead* of a former party, does not involve the release of the former party. We submit that the *terms are equivalents.* An agreement to substitute is pleaded.

In reply to our second proposition counsel have only to say, that the duty, which defendants owed to complainant, and a violation of which the court below would otherwise have had jurisdiction to enjoin, was *covered by an express contract between the parties* and that the terms of the contract superseded that duty, and thereby deprived complainant of a right of action based upon that duty not to commit a breach of trust. This doctrine is asserted, but not established by a reference to authorities.

But the remarkable feature of this argument is the fact that counsel, almost in the same breath, *maintain that no express contract covering these matters exist, or ever existed between this complainant* and the defendant.

We submit that the argument of counsel is a practical confession of the correctness of our first two propositions, and of the error of the court below in dismissing the bill.

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In reply to the suggestion of counsel that we should have presented formal exceptions to the rulings of the Circuit Court (evidenced probably by bills of exceptions), we beg to refer to the cases of *Chicago A. W. Co.* v. *Connecticut M. L. I. Co.*, 57 Ill., 424, and *Smith* v. *Newlands*, 40 Ill., 101.

Respectfully submitted.

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